AMOCO PRODUCTION CO.

IBLA 83-414 Decided October 31, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-52355.

Affirmed.

1. Oil and Gas Leases: Lands Subject to

The Bureau of Land Management properly rejects an oil and gas lease offer for lands which have been patented with no mineral reservation to the United States.

2. Patents of Public Lands: Effect of

The effect of the issuance of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land. Where the lands described in an oil and gas lease offer have been patented under a railroad grant BLM properly rejected the offer since it has no jurisdiction over the lands.

APPEARANCES: L. G. Gaskins, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Amoco Production Company has appealed from a decision dated January 8, 1983, by the Utah State Office, Bureau of Land Management (BLM), rejecting its noncompetitive oil and gas lease offer for the reason that the lands applied for were patented under railroad grant No. 44, January 7, 1902, with no mineral reservation to the United States.

Appellant's noncompetitive lease offer requested the following land:

A Parcel located in Township 3 North, Range 7 East, Salt Lake Meridian, Summit County, Utah described as follows:

Beginning at the Southeast Corner of Section 25, Township 3 North, Range 7 East, S.L.M.; thence North along the East line of

> said Section 25, 80.0 chains (5,280.0 feet) to a Corner (the Northeast corner of Section 25, Township 3 North, Range 7 East, S.L.M., as described in the field notes of the Thomas C. Bailey Survey dated July, 1875), under the joint Contract of Bailey and Burrill; This Corner is the true point of Beginning; thence continuing on the same North bearing 10.95 chains (722.7 feet) to the Northwest Corner of Section 30. Township 3 North, Range 8 East, S.L.M. (Julian Bausman, October 1873) which is also the Southeast Corner of Section 24, Township 3 North, Range 7 East, S.L.M. (Baxter and Blossom, June 1899); thence South 72 degrees 00' West 35.45 chains (2339.7 feet) to the Quarter Section Corner common to Section 24 and 25, Township 3 North, Range 7 East, S.L.M.; thence in an Easterly direction 33.71 chains (2224.86 feet) more or less to the true point of Beginning and containing 23.93 acres more or less.

The file contains a photostat of railroad patent No. 44 which recites that "all of section twenty-five, containing six hundred forty acres" in T. 3 N., R. 7 E., Salt Lake meridian, was granted to the Union Pacific Railroad Company in 1902.

Appellant has researched the surveys made on these lands in 1873, 1875, and 1899. The 1899 survey was approved on October 8, 1900. Appellant contends, relying on survey notes, that the applied for parcel is a "hiatus of some 23.93 acres * * * created as a result of three inconsistent approved surveys in a area between sections 24 and 25."

[1, 2] The triangle of land described in appellant's offer is shown to be in sec. 25 on BLM's current oil and gas plats. These plats correspond to the 1899 survey, approved on October 8, 1900. According to the record and the plats, sec. 25 was patented to the Union Pacific Railroad Company in 1902. The intent of Congress was to patent alternate sections to the railroad, not specific acreages. Appellant's arguments suggest that the land described in the offer is not, or should not be part of the patent because of survey discrepancies. These arguments are not persuasive. Prior to passing title, the United States has the power to survey and resurvey, establish and reestablish boundaries on its own lands. Once patent has issued, however, the Government no longer has the power to nullify the survey on which it is based. The last accepted survey prior to issuance of patent in 1902 was that of 1899. This is the controlling survey as to the north boundary of sec. 25. See United States v. Reimann, 504 F.2d 135, 140 (10th Cir. 1974). The United States is without jurisdiction over the land described in the offer and it is obvious that such land cannot be subject to mineral leasing laws. The effect of issuance of a patent is to transfer the legal title and remove from the jurisdiction of the Department inquiries into and consideration of disputed questions of fact. Germania Iron Co. v. United States, 165 U.S. 379 (1897); Harry J. Pike, 67 IBLA 100 (1982). BLM properly rejected the offer on the ground that the lands applied for were patented without a mineral reservation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge